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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/931,912	08/20/2001	Nghi Van Nguyen	05725.0593-00	4343
7590 09/14/2004 Finnegan, Henderson, Farabow, Garrett & Dunner, L.L.P. 1300 I Street, N.W. Washington, DC 20005-3315			EXAMINER ELHILO, EISA B	
			ART UNIT 1751	PAPER NUMBER

DATE MAILED: 09/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/931,912

Applicant(s)

NGUYEN ET AL.

Examiner

Eisa B Elhilo

Art Unit

1751

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 18 August 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: None.Claim(s) objected to: None.Claim(s) rejected: 1-19 and 21-42.

Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

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Continuation of 5. does NOT place the application in condition for allowance because: Applicants have not provided data or showing to overcome the rejection of record.

With respect to the rejection of claims 1-6, 10-11, 18-19, 23 and 38-42, based on Bore (US' 391), Applicants argue that Bore et al. does not teach or disclose at least one anion chosen from chelating anions and sequestering anions.

The examiner respectfully disagrees with this argument because Bore et al. (US' 391) teaches a composition comprising hydroxide compound (see col. 4, lines 35-36), reducing agents (see col. 4, lines 52-54) and a complexing agent comprising a soft entity such as triethanolamine (see col. 11, Example 15) and also teaches sequestering anions of alkaline earth metal halides such as calcium chloride, sodium chloride and lithium bromide (see col. 4, lines 39-45). Therefore, Bore et al. generally discloses the sequestering anions and chelating anions in a composition for improving and modifying the cosmetic properties of living human hair.

With respect to the rejection of claims 7-9, 21-22, 24 and 34-37, based on Bore et al. (US' 391) in view of Mathews et al. (US' 246), Applicants argue that there is no motivation or suggestion to combine the references.

The examiner respectfully disagrees with the above arguments because Bore et al. (US' 391) as a primary reference teaches a composition for improving and modifying the cosmetic properties of living human hair comprising alkali metal halides and alkali metal sulfates as the sequestering agents (see col. 4, lines 40-45) and where in the composition has a pH between 10.5 to 13 (see abstract). Mathews et al. (US' 246) as a secondary reference teaches in analogous art of hair waving formulation, a composition comprising sequestering and complexing agents of ethylene-diamine tetraacetic acid (EDTA) (see col. 4, lines 22-37), and wherein the composition

has a pH in the range of 9 to 9.5 (see abstract). Therefore, there is a sufficient motivation to one having ordinary skill in the art to formulate such a composition by incorporating the sequestering agents of Mathews in the composition of Bore to make such a composition with a reasonable expectation of success for improving the properties and performance of the composition and would expect such a composition to have similar properties to those claimed. Further with respect to the argument that the combined references teach compositions having different pH's ranges, the examiner would like to point out that both references teach alkaline compositions in which the range of the PH at an alkaline level as disclosed above and therefore, it is obvious to combine two analogous compositions having similar level of alkalinity.

With respect to the rejection of claims 12-17,25-27 and 29-33, based on Bore et al. (US' 391) in view of Au et al. (US' 111), Applicants argue that there is no motivation or suggestion to combine the neutral composition of Au with the basic composition of Bore.

The examiner respectfully disagrees with the above argument because Bore et al. (US' 391) as a primary reference teaches a composition for improving and modifying the cosmetic properties of living human hair having a pH of 10.3 to 13 (see abstract) and Au et al. (US' 111) as a secondary reference teaches a hair treating composition having a pH of 10 (see col. 41, Example 26 and col. 42, Examples 27 and 28). Therefore, it is obvious to combine two analogous compositions comprising similar ingredients and having similar level of alkalinity.

With respect to the rejection of claim 28, based on Bore et al. (US' 391) in view of Au et al. (US' 111) and further, in view of Plyes et al. (US 630 A), Applicants argue that Plyes in no way recites the deficiencies of Bore and Au, discussed above.


The examiner respectfully disagrees with the above argument for the same reasons as stated above. Therefore, the prima facie case of obviousness has been established.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B Elhilo whose telephone number is (571) 272-1315. The examiner can normally be reached on M - F (8:00 -5:30) with alternate Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Eisa Elhilo
September 8, 2004


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